



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

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8

9 MEETING MINUTES

10 PLANNING BOARD-DECEMBER 1, 2022, 1:00 P.M.

11 LOCATION: PITTS CENTER-5377 N VIRGINIA DARE TRAIL, SOUTHERN SHORES, NC 27949

12

13

14 I. CALL TO ORDER:

15 Chairperson Andy Ward called the meeting to order at 1:00 pm. Planning Board Members Ed
16 Lawler, Dan Fink (alternate #2), Jan Collins (alternate #1), Tony DiBernardo (Vice Chairperson),
17 Andy Ward (Chairperson), and Deputy Town Manager/Planning Director Wes Haskett were
18 present.

19

20 II. PLEDGE OF ALLEGIANCE:

21 Chairperson Ward led the Pledge of Allegiance.

22

23 III. APPROVAL OF AGENDA:

24 Vice Chair DiBernardo **moved** to approve the agenda of December 1, 2022 for the Special
25 Planning Board meeting, Seconded by Chairperson Ward. The motion passed unanimously (5-0).

26

27 IV. PUBLIC COMMENT

28 None

29

30 V. New Business

31 VA-22-01: Public Hearing to consider a Variance application submitted by Timmons Group on
32 behalf of Fire Service Real Estate, Inc. to seek relief from Town Code Section 36-171(1) at the
33 property located at 28 E. Dogwood Trl.

34

35 Chairperson Ward stated the board will now be performing the duties of the Board of
36 Adjustment and called on Planning Director Wes Haskett for the analysis report.

37

38 GENERAL INFORMATION

39 **Applicant:** Timmons Group, Kimberly D. Hamby

40 1805 W. City Drive, Unit E.

41 Elizabeth City, NC 27909

42 **Property Owner:** Fire Service Real Estate, Inc.

43 15 South Dogwood Trl. Southern Shores, NC 27949

44 **Requested Action:** Variance from Town Code Section 36-171(1)

45 **PIN #:** 986819516864

46 **Location:** 28 E. Dogwood Trl.

47 **Zoning:** R-1, Low-Density Residential District
48 **Existing Land Use:** “Residential”
49 **Surrounding Land Use & Zoning:**
50 **North-** Residential; RS-1, Single-Family Residential District
51 **South-** Residential; RS-1, Single-Family Residential District
52 **East-** Residential; RS-1, Single-Family Residential District
53 **West-** Residential; RS-1, Single-Family Residential District
54 **Physical Characteristics:** Developed (existing EMS/Fire Station).
55 **Applicable Regulations:** Chapter 36, Zoning Ordinance: Article VI, General Provisions; Article
56 VII, Schedule

57
58 The analysis read as, the applicant is requesting a Variance to seek relief from Town Code
59 Section 36-171(1) as it applies to the construction of a new EMS/Fire Station at 28 E. Dogwood
60 Trl. Fire Stations are allowed in the R-1 Low-Density Residential District through the issuance of
61 a Special Use Permit if all applicable Town Code requirements are satisfied. Town Code Section
62 36-171(1) requires site plans to demonstrate that following construction of the proposed
63 improvements, the property will retain all stormwater generated by a one and one-half inch
64 rain event and will not adversely affect any stormwater management system previously
65 constructed by the Town or on adjacent properties.

66
67 The applicant has demonstrated compliance with the one and one-half inch rain event
68 requirement in three out of four drainage areas on the lot. Drainage area three is on the south
69 side of the lot and it contains the concrete apron in front of the proposed building and a small
70 portion of the roof. Currently, stormwater in this area runs down to E. Dogwood Trl. and is
71 collected and stored in a stormwater retention area on the Town-owned lot at 29 E. Dogwood
72 Trl. The applicant is requesting a Variance to allow stormwater generated by the new EMS/Fire
73 Station in drainage area three to be collected and stored in the retention area located at 29 E.
74 Dogwood Trl. as it is today.

75
76 Chairperson Ward read the guidance for the hearing which stated this not a legislative public
77 hearing where the public is invited to give opinion and provide general comments or guidance
78 to the board about zoning text amendments. This is a quasi-judicial hearing, only aggrieved
79 parties may participate. A member of the public may participate if aggrieved. An aggrieved
80 person may give relevant testimony under oath, no opinions just testimony based on facts, it is
81 just like taking the stand in a courtroom. An aggrieved person is subject to cross-examination by
82 any other party and by this board just like court. To be aggrieved under the law you must be
83 directly and substantially affected by the board's decision. Guidance from past North Carolina
84 cases and the North Carolina School of Government help us understand that to be aggrieved
85 you must be an immediate neighbor whose property use, enjoyment, and value will be
86 adversely impacted by the board's decision. If you're an aggrieved person and want to
87 participate in this quasi-judicial hearing by giving sworn factual testimony or wish to cross-
88 examine any witness during this proceeding come forward to the podium and be sworn in.

89
90 The Town Clerk swore in those wishing to give testimony.

91
92 Chairperson Ward started with the recusal or party challenges to board members, reading a list
93 of questions to which all board members replied “no.”

- 94
- 95
- 96
- 97
- 98
- 99
- Has any board member communicated with other board members, the applicant, or town staff about this application?
 - Does any board member have a fixed opinion that is not susceptible to change?
 - Does any board member have a close familial business or associational relationship with the applicant?
 - Does any board member have a financial interest in the outcome of this matter?

100

101 Evidentiary Hearing

102 Chairperson Ward called on Kim Hamby to present her evidence.

103

104 Applicant Kim Hamby stated they are requesting this variance due to difficulty in collecting
105 runoff from the concrete apron between the garage doors at the front of the fire station and
106 the street. This is the only drainage area where we are not meeting requirements and we have
107 done what we can to limit runoff. There is a sidewalk and parking in that drainage area as well
108 as the concrete apron, but we are proposing those via pervious concrete and or pavers so that
109 they would not create runoff. Ms. Hamby further stated she has met with the Town Planner
110 and Town Engineer Joe Anlauf and we kind of brainstormed and tried to think of a way to
111 redirect this water but there's a substantial slope coming out of those garage doors that make it
112 difficult to provide any type of depression or gutter to reroute that water to a stormwater
113 treatment unit. All the other roof areas and pavement areas are going to a combination of
114 infiltration devices and underground chambers. Overall, we don't feel that we're causing any
115 damage or difficulty on other properties as we are reducing impervious coverage with the
116 redevelopment of the site and then providing the substantial storage. It'll be a relatively minor
117 amount of water that will continue to be routed where a large volume of the water currently
118 goes.

119

120 Chairperson Ward asked Ms. Hamby if she would like to go over the application or any facts
121 that she needs the board to know. Ms. Hamby stated it is straight forward and would like to
122 answer any questions from the board.

123

124 Planning Board Member Collins asked if there is any situation after a heavy rain for any
125 standing water, or is it all sloped that it is immediately redirected? Kim Hamby answered by
126 stating it will be redirected in that it goes to the edge of the road, some of it goes across the
127 pavement and what doesn't go across the pavement goes into a small drain at the corner next
128 to the driveway that then routes it across the street to the retention basin. Any water that does
129 run off will go stand in that detention basin.

130

131 Vice Chairperson DiBernardo asked if the retention basin was currently being utilized? Ms.
132 Hamby stated under the current conditions a large portion of the site ends up in that basin, but
133 they will be drastically reducing that.

134

135 Vice Chairperson DiBernardo asked as far as water going into the retention basin, will there be
136 any difference between now and the future? Kim Hamby stated with the proposed
137 development the amount of water going into the basin will be reduced.

138

139 Chairperson Ward stated he looked over the plans and inquired about lot coverage. Kim Hamby
140 stated the lot coverage is reduced with the new plans.

141
142 Chairperson Ward asked to confirm that there are currently no underground catch basins and
143 stormwater coming from the site is crossing East Dogwood to the retention area or going onto
144 Duck Rd. Kim Hamby stated the only drainage structure to receive any runoff is the one that
145 comes under Dogwood Trail and into the basin.

146
147 Planning Board Member Lawler asked if it was correct that the stormwater basin was designed
148 with the flow from that parcel. Kim Hamby stated she is not sure what the basis was originally
149 designed for but has been told that it was to alleviate flooding at that intersection. She stated
150 she can only assume that some of that flooding was caused in part by the fire station.

151
152 Planning Board Member Lawler asked if the state reviews the stormwater basin capacity? Kim
153 Hamby stated to the best of her knowledge it is not a permitted basin, just an improvement
154 done by the town.

155
156 Planning Board Member Lawler asked how the basin is performing? Kim Hamby stated it
157 performs well and has only seen it empty.

158
159 Planning Board Member Fink stated it looked straight forward to him and had no questions.

160
161 Applicant Kim Hamby stated she felt that they were making a tremendous improvement.

162
163 Planning Director Haskett did not have any questions for the applicant. He did state that the
164 existing lot coverage is 70.3% and the proposed new facility would be 68.93%, a decrease in
165 impervious area of 381 square feet.

166
167 Planning Director Haskett read a report provided by Town Engineer Joe Anlauf, the staff report
168 with staff's finding.

169
170 CRITERIA NEEDED IN ORDER TO GRANT VARIANCE

171 Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when
172 performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the
173 Zoning Ordinance upon a showing of all of the following:

174
175 (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not
176 be necessary to demonstrate that, in the absence of the variance, no reasonable use can be
177 made of the property.

178 • Strict application of Town Code Section 36-171(1) would require adjustment of the
179 proposed grade to lower the site which would affect the other drainage areas. Lowering
180 the site would also increase flood risk.

181 (2) The hardship results from conditions that are peculiar to the property, such as location, size,
182 or topography. Hardships resulting from personal circumstances, as well as hardships resulting
183 from conditions that are common to the neighborhood or the general public, may not be the
184 basis for granting a variance.

185 • The lot area of the subject property is appx. 27,000 sq. ft.

186 • The other Fire Station in the Town is located at 15 S. Dogwood Trl. and its lot area is
187 appx. 30,000 sq. ft.

188 • The lot area of another site where a new EMS Station is to be constructed (Kill Devil
189 Hills) is appx. 91,000 sq. ft.

190 (3) The hardship did not result from actions taken by the applicant or the property owner. The
191 act of purchasing property with knowledge that circumstances exist that may justify the
192 granting of a variance shall not be regarded as a self-created hardship.

193 • The hardship is a result of the size of the lot.

194 (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance,
195 such that public safety is secured, and substantial justice is achieved.

196 • The intent of the R-1, Low-Density Residential District is to encourage the
197 development of permanent low-density residential neighborhoods and community
198 facilities necessary for the health and safety and general welfare of the community.

199 • By granting the Variance, a new Fire/EMS Station can be constructed which will
200 benefit the public's health, safety, and general welfare.

201

202 Planning Director Haskett stated the Letter/Report from Town Engineer Joe Anlauf read as: He
203 believes the KSAT is extremely conservative and he also agrees that using the bottom of the
204 basin elevation and the adjacent stormwater basin (being normally dry) is a fairly good method
205 by which to determine the seasonal high water table. The calculations provided appear to
206 indicate that in three out of the four drainage areas that the requirements of the ordinance
207 have been satisfied.

208

209 Chairperson Ward asked "conservative" would mean erring on the side of more rather than less
210 in engineering terms. Planning Director Haskett stated he is not an engineer but would agree
211 with that statement.

212

213 Planning Board Member Lawler asked about the three out of four drainage areas, what is the
214 fourth. Planning Director Haskett stated there are four drainage areas on the site. The applicant
215 has satisfied the requirement at drainage areas one, two, and four. Drainage area number three
216 is the reason why they're requesting the variance.

217

218 No further questions from the board.

219

220 No aggrieved party wishing to speak.

221

222 Chairperson Ward read and reviewed the criteria necessary once again and asked any board
223 member to speak up if they had a question or issue. No board member had questions or
224 concerns.

225

226 Chairperson Ward stated number four sums it up, the intent of the R-1, Low-Density Residential
227 District is to encourage the development of permanent low-density residential neighborhoods
228 and community facilities necessary for the health and safety and general welfare of the
229 community. By granting the Variance, a new Fire/EMS Station can be constructed which will
230 benefit the public's health, safety, and general welfare.

231

232 Chairperson Ward stated the applicant's material was very thorough, the site plan seemed to

233 encapsulate what they're trying to do as far as stormwater runoff goes. It looks like a better
234 situation because they're capturing more stormwater runoff and the footprint of the property is
235 smaller too.

236

237 Chairperson Ward stated the board can approve the variance, approve the variance with
238 conditions, or deny the variance.

239

240 **VOTE**

241 1. Chairperson Ward called for a vote of approving the variance. All members voting aye,
242 5-0

243 2. Chairperson Ward asked if anyone approved the variance with conditions, all members
244 voted they had no conditions (5-0).

245

246 Chairperson ward stated there is no need to ask about denial as the board has voted to approve
247 with no conditions. The planning board serving as the board of adjustment here today has
248 approved the variance from the applicant.

249

250 Planning Director Haskett asked to clarify criteria 1-4, by voting for the variance the board
251 believe that:

252 1. Strict application of the ordinance that there is a hardship? All members voted yes.

253 2. The hardship results that from conditions that are peculiar to the property? All
254 members voted yes.

255 3. The hardship did not result from actions taken by the applicant or the property owner?
256 All members voted yes.

257 The requested variance is consistent with the spirit purpose and intent of the
258 ordinance? All members voted yes.

259

260 Chairperson Ward stated all votes are affirmative and it was a unanimous vote to grant the
261 variance.

262

263 To clarify the intent of the board, Vice Chairperson Ward **moved** to grant the variance and
264 approve section 1,2,3, and 4, Seconded by Planning Board Member Collins. Motion passed
265 unanimously (5-0).

266

267 **VI. Old Business**

268 None

269

270 **VII. Public Comment**

271 None

272

273 **XIII. Planning Board Member Comments**

274 None

275

276 **IX. Announcements**

277 Planning Director Wes Haskett stated the next meeting will be held December 19th beginning at
278 5:00 p.m. in the Pitts Center. There is another variance application to consider, and if time allows
279 commercial design standards and 160D changes. ETJ member Finelli has also requested an

280 agenda item, transferring the ETJ area to Dare County. Board Attorney Jay Wheless will also be
281 present at the next meeting.

282

283 **X. Adjourn**

284 Hearing no further business, **motion** made by Vice Chairperson DiBernardo to adjourn, Seconded
285 by Chairperson Ward. Motion passed unanimously. The time was 1:38 P.M.

286

287

288

289 ATTEST:

Respectfully submitted,

290

291 _____
Andy Ward, Chairperson

Sheila Kane, Town Clerk

DRAFT